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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/507,509 | 09/10/2004 | Erwin Welbergen | 0005294.0001 | 1140 |

34758 7590 09/03/2008

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| ART UNIT | PAPER NUMBER |
| 2182 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 09/03/2008 | PAPER |

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The time period for reply, if any, is set in the attached communication.

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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/507,509
Filing Date: September 10, 2004
Appellant(s): WELBERGEN, ERWIN

Jack Shore (Reg. No. 17,551)
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 06/20/08 appealing from the Office action mailed 01/23/08

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments after Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| (A) 6,489,947 | Hesley et al. | 7-1998 |
| (B) 6,661,410 | Casebolt et al | 9-2001 |
| (D) 6,587,091 | Serpa | 4-2001 |
| (E) 6,065,138 | Gould et al | 1-1997 |

(C) Applicant Admitted Prior Art ("Background of Invention")

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 16-18, 21-23, 26-28, 30-32 are rejected under 35 U.S.C. 103 (a) over Hesley and further in view of Casebolt and Applicant Admitted Prior Art. Claims 19, 29 and 29 are rejected under 35 U.S.C.

103(a) over Hesley & Casebolt and further in view of Serpa. Claims 24 & 25 are rejected under 35 U.S.C. 103(a) over Hesley and Casebolt and further in view of Gould. The reject is set forth in the final office action mail 1/23/08

**(10) Response to Argument**

**Issue 1: (A & B – Claims 16, 26, 28 & 32)**: Appellant argues that prior art of record fails to teach "the essence of Appellant's invention which is that the starting of the timer to signal the user to move his limb from the cramped position occurs only after no input signal is being generated by Appellant's mouse or other signal generator." (Appeal – Pages 14 - 15)

**Examiner's response to Issue**: The underlying issue between the Appellant and the Examiner rests on a disagreement whether the combination of Hesley and Casebolt teaches is starting a timer only after detecting a user's limb to be in a sustained cramped position; i.e. It is detected that the hand is in physical contact present on the mouse, however no movement has been detected. The motivation for the instant invention is that the Applicant wants to prevent a user from experiencing injury from sustained usage of an input device such as a mouse during times of inactivity (without compromising productivity).

For the benefit of the board of appeals it should be noted that prior art of record would read on the claimed invention if it can be shown that (a) A user's hand is present on the mouse (b) Timer that starts after the system recognizes that hand has not moved for x amount of time and (c) Generate an alarm to the user when the length of time the user has not moved his limb exceeds a threshold value.

Hesley discloses an invention for almost identical motivation as the Applicant (preventing injury from sustained usage of an input device such as a mouse). Hesley differs from the Applicant's invention in respect that Hesley provides an alarm after recognizing the hand has been present for over a given threshold value and thus would potentially be risking injury, where as the Applicant only provides the said alarm when the hand has been present, but not moved (generated any input) for said threshold value.

Hesley therefore teaches fully above stated limitation of (a) – user's hand is present on the mouse & (c) – generate an alarm when the length of time the user has not moved his limb has exceeded a threshold value. Hesley only partially teaches (b) limitation - timer starts after the system recognizes the hand is present. Hesley fails to teach a timer that is initiated only after recognizing that the hand is present and inactive (no input has been generated).

Casebolt teaches primarily a system for conserving power, however can be configured in other environments outside of simply power management system [see Casebolt, Col. 6, Lines 48-63]. Casebolt teaches a state machine having an "EXTENDED IDLE state" that is executed after it is detected that the user's hand has been present on the mouse for relatively long period (Casebolt provides an example of 30 seconds) without moving the mouse [see Casebolt, Col. 15, Lines 15-25]. The exert of above citation reads:

> EXTENDED IDLE State **169**
>
> This state is intended to conserve additional power, if the user has rested his hand on the mouse for a relatively long period, e.g., 30 seconds, without moving the mouse (XY motion) or the scroll wheel (Z motion), or actuating any of the mouse buttons. In this state, IC 7 is powered at a reduced rate, e.g., once a second instead of once every 130 ms. After a predetermined time in this state, e.g., 180 seconds, the mouse will enter SHUTDOWN state **165**. Otherwise, EXTENDED IDLE state **169** is the same as IDLE state **171**.

Therefore Casebolt clearly teaches a state machine configured to calculate time the user has his hand on the mouse and no input signal is being generated ("without moving the mouse"). Thus it is unmistakably evident that Casebolt's system has a timing mechanism that starts the timer after input signals are not generated, yet the user's hand is still present on the mouse. In light of above teaching, if the Applicant still maintains that the combination of Hesley with that of Casebolt fails to teach the limitation in dispute, it begs the question how the Applicant believes Casebolt's enters the said

"EXTENDED Idle state" without a timing mechanism to calculate the time the user's hand is present on the mouse and further no input signal has been generated during that time.

**Issue 2: Combination of References (A & B / C)**: Appellant argues that combination of Hesley with that of Casebolt would not have been obvious to one of ordinary skill. Further, Appellant argues the combination of the above two references as modified by AAPA.

**Examiner's response to Issue**: In previous office actions, Examiner had responded to above arguments stating that the Examiner had relied on combination of A & B reference for the reasons of providing a user with an effective power management system. The introduction of the C reference (AAPA) was simply used for a reinforcement of the combination of the above references was valid. For the purpose of the outstanding action, the C reference is not necessary and can be dropped without effecting the rejection as it currently stands. However, in response to Appellant's argument that the combination of the A & B teachings for the reasons of effective power management system "is not relevant or applicable to applicant's claimed invention," it should be noted that the Examiner's combination does not have to be obvious for the same reasons as that of the Applicant. As has been repeated numerous times in the past office actions, combination of A & B references provide a proper motivation to combine the said references and further more importantly teach all the required limitations of the claimed invention. With respect to Applicant's disagreement regarding the failure of the references to teach timing limitation of Claim 1, the Examiner has addressed the issue above.

It is substantially evident to the Examiner as it should to one of ordinary skill in the art that the combination of Hesley with that of Casebolt teaches all the required limitations of the claimed invention and thus the Examiner hopes that the board recognizes that all the limitations as presented are taught by the above combination of prior art and further a prima facie for obviousness has been established for the claimed limitations.

Thus for the above reasons, it is believed that the rejections as provided in Final office action mailed on January 23rd, 2008 should be sustained.

Respectfully submitted

/Jasjit S Vidwan/ Aug 28th 2008

**Jasjit Vidwan JV**
**Art Unit 2182**
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